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Attorneys for Third-Party Defendant COR Clearing, LLC

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

CHINA ENERGY CORPORATION,)	3:13-CV-562-MMD-VPC
)	
Plaintiff,)	
)	
))	
))	
))	
vs.)	
ALAN HILL, et al.,)	
)	
Defendants,)	
)	
))	
ELENA SAMMONS AND MICHAEL SAMMONS,)	
Third-Party Plaintiffs)	
)	
))	
vs.)	
CEDE & CO., THE DEPOSITORY TRUST)	
COMPANY, AND COR CLEARING)	
)	
Third-Party)	
Defendants.)	
)	
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))	
))	
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))	
STIPULATION AND)	
[PROPOSED] ORDER)	
GRANTING THIRD-)	
PARTY DEFENDANT)	
COR CLEARING, LLC)	
AN OPPORTUNITY TO)	
RESPOND TO)	
PLAINTIFF CEC'S)	
MOTION FOR PARTIAL)	
SUMMARY JUDGMENT)	
ON COUNT I OF THE)	
COMPLAINT AS TO THE)	
SAMMONS)	
DEFENDANTS AND)	
GRANTING CEC LEAVE)	
TO REPLY TO COR)	
CLEARING LLC'S)	
RESPONSE)	

1 Third-Party Defendant COR Clearing, LLC (“COR”) and Plaintiff China Energy
2 Corporation (“CEC”), by and through their counsel, jointly submit the following Stipulation
3 granting COR an opportunity to respond to Plaintiff CEC’s Motion for Partial Summary
4 Judgment on Count I of the Complaint as to the Sammons Defendants (Dkt. No. 71) and
5 granting CEC an opportunity to reply to COR’s response as well as a [Proposed] Order

6 1. On November 29, 2013, CEC filed Plaintiff CEC’s Motion for Partial Summary
7 Judgment on Count I of the Complaint as to the Sammons Defendants (Dkt. No. 71), which
8 asserts that the Sammonses failed to perfect their dissenter’s rights under NRS 92A.440. *See*
9 Dkt. No. 71, at 2.

11 2. On January 29, 2014, Third-party Plaintiffs Elena and Michael Sammons filed a
12 First Amended Third-Party Complaint against COR and others requesting a declaration “that if
13 they failed to perfect their [dissenter’s] right to judicial appraisal of the 650,000 shares of CEC
14 it was caused by errors of the Third-Party Defendants which constituted breach of contract,
15 breach of fiduciary obligations, and/or negligence.” *See* Dkt. No. 128, p. 11, ¶ 42 (emphasis
16 added).¹

18 3. The First Amended Third-Party Complaint was served on COR after the
19 responses to CEC’s Motion for Partial Summary Judgment on Count I of the Complaint as to
20 the Sammons Defendants (Dkt. No. 71) were due.

21 4. On February 24, 2014, COR filed its Motion to Dismiss and/or Strike Third-party
22 Complaint for failure to Comply with Federal Rule of Civil Procedure 14(a), *see* Dkt. No. 161,
23 which the Sammonses opposed, *see* Dkt. No. 165.

27 ¹ The Sammons served their First Amended Third-Party Complaint (Dkt. No. 128) before a response to their
28 original Third-Party Complaint was due.

1 5. On March 21, 2014, the Court stayed discovery as to the Third-Party Defendants,
 2 including COR, pending a ruling by the Court on the Third-Party Defendants' pending motions
 3 to dismiss (the Third-Party Discovery Stay Order). *See* Dkt. No. 192, at 2. The Third-Party
 4 Discovery Stay Order further stated that "in the event the District Court denies the motions to
 5 dismiss, the parties shall meet and confer and submit a proposed discovery plan and scheduling
 6 order that complies with LR 26-1(e), with discovery deadlines measured from the date of
 7 decision of the respective motions to dismiss." *Id.* at 1-2.
 8

9 6. On June 13, 2014, the Court denied COR's Motion to Dismiss and/or Strike
 10 Third-party Complaint for failure to Comply with Federal Rule of Civil Procedure 14(a). *See*
 11 Dkt. No. 226.²

12 7. On July 31, 2014, the parties submitted a Stipulated Discovery Plan and
 13 Scheduling Order setting September 19, 2014 as the discovery cut-off date for fact discovery on
 14 both Count I of the Complaint and the Third-Party claims. *See* Dkt. No. 224, at 2.³
 15

16 8. The Stipulated Discovery Plan and Scheduling Order was approved by the Court
 17 and entered on August 7, 2014. *See* Dkt. No. 225, at 5.

18 9. Third-Party Defendant COR requests leave to file a response to CEC's Motion
 19 for Partial Summary Judgment on Count I on the Complaint as to the Sammons Defendants
 20 (Dkt. No. 71) because the resolution of that motion could affect the Third-Party claims that the
 21 Sammonses have brought against COR. As noted in Paragraph 2 above, the Sammonses' third-
 22 party claims against COR are conditioned on the Court finding that the Sammonses "failed to
 23

24
 25 ² The motions to dismiss of Third-Party Defendants The Depository Trust Company ("DTC") and Cede &
 26 Company ("Cede") are still pending.
 27

³ Third-Party Defendants DTC and Cede executed the stipulation without waiver of the personal jurisdiction
 arguments in their pending motion to dismiss and with the understanding that the stay of discovery as to them
 remains in effect. *See* Dkt. No. 244, at 2, n.1

perfect their [dissenter's] right to judicial appraisal of . . . 650,000 shares of CEC". See Dkt. No. 128, p. 11, ¶ 42.

10. CEC does not oppose COR being granted leave to file a response to CEC's Motion for Partial Summary Judgment on Count I on the Complaint as to the Sammons Defendants (Dkt. No. 71), as long as CEC is also provided an opportunity to file a reply to COR's response.

The undersigned parties agree and stipulate as follows:

1. COR's deadline to file a response to Plaintiff CEC's Motion for Partial Summary Judgment on Count I of the Complaint as to the Sammons Defendants (Dkt. No. 71) shall be August 29, 2014; and

2. CEC's deadline to file a reply to COR's response shall be September 12, 2014.

Respectfully submitted this the 11th day of August, 2014.

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8 By:/s/ Justin J. Bustos
9 Justin J. Bustos

10 *Counsel for Plaintiff China Energy Corporation*

11 **[PROPOSED] ORDER**

12 IT IS SO ORDERED:

13

UNITED STATES MAGISTRATE JUDGE

14 Dated this ____ day of August, 2014.

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CERTIFICATE OF SERVICE

I, Meredith Jowers Lees, certify that on August 11th, 2014, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the electronic mail notice list.

A copy was also served by First Class U.S. Mail, postage prepaid on the following individuals:

Elena Sammons
15706 Seekers St.
San Antonio, TX 78255

Randy Dock Floyd
4000 Goff Road
Aynor, SC 29551

Jun He
231 Split Rock Road
The Woodlands, TX 77381

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed August 11th, 2014, at Birmingham, Alabama.

By: /s/ Meredith Jowers Lees
Meredith Jowers Lees